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every trustee
should ask...

...the new
Charities Act



A networking lunch and lecture

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Office of the **Third Sector**



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welcome

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Charities Act - History

- 1996: The “Deakin” Report
- 2001-02: “Private Action: Public Benefit” – review by Prime Minister’s Strategy Unit
- 2004: Draft Charities Bill published, scrutinised and introduced
- 2005: Charities Bill falls but is re-introduced
- 2006: Charities Bill is passed becoming the Charities Act 2006

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The Government's objectives

- Modernise charity law and status to provide greater clarity and stronger emphasis on delivery of public benefit
- Improve range of legal forms enabling organisations to become more effective and entrepreneurial
- Develop greater accountability and transparency to build public trust and confidence
- Ensure independent, fair and proportionate regulation

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What is a charity?

- New list of charitable purposes
- All existing charitable purposes preserved
- Flexibility to develop new purposes in the future
- No presumption of public benefit
- Charity Commission to publish guidance on public benefit
- Ongoing public benefit checks

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What is public benefit?

- Public benefit is the legal requirement that all charities must have purposes that benefit the public
- Currently, charities for the relief of poverty, or the advancement of education or religion are presumed to benefit the public

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Charities Act & Public Benefit

- Lists 13 descriptions of charitable purposes
- Defines a charitable purpose as one that benefits the public
- Removes the presumption that poverty religious or educational charities benefit the public
- Gives the Commission a new public benefit objective “to raise awareness & understanding of the operation of the public benefit requirement”
- Says Commission must consult on its public benefit guidance
- Says charity trustees must have regard to our guidance

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List of 13 headings of charitable purposes:

- Poverty
- Education
- Religion
- Health or saving of lives
- Citizenship or community development
- Arts, culture, heritage or science
- Amateur sport

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List of 13 headings of charitable purposes:

- Human rights, conflict resolution or reconciliation, religious or racial harmony, equality or diversity
- Environmental protection or improvement
- Relief in need - youth, age, ill-health, disability, financial hardship, other disadvantage
- Animal welfare
- Efficiency or the armed forces or police, fire or rescue services
- Other purposes

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Charity Commission's approach

- Published in March for consultation. Consultation closed 6 June.
- Specific sub-sector consultations to take place in the autumn:
 - Poverty
 - Religion
 - Education
 - Fee-charging charities

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Public Benefit - Principles

- There must be an identifiable benefit
- Benefit must be to the public, or a section of the public
- People on low incomes must be able to benefit
- Any private benefit must be incidental

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Public Benefit - Summary

- Public benefit is not a new requirement but charities need to think about how they meet it
- Read Commission's draft guidance, and if in doubt, seek advice
- Get involved in the Commission's consultations
- Above all – charities should see this as an opportunity to tell their public benefit story well

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The Charity Commission

- Established as a corporate body
- Separate chair and chief executive roles
- Remains a non-Ministerial Department
- No powers of direction or control by Ministers
- Membership increased from five to nine
- New statutory objectives, functions and duties
- Annual public meetings
- The Charity Tribunal

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The Charity Commission: new powers

- Greater flexibility to apply cy-pres rules
- Powers to resolve membership disputes
- Powers to protect property in the event of mismanagement or misconduct
- Powers of search and seizure

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Registration of charities

- Threshold for registration increased from £1,000 to £5,000 income
- Voluntary registration where income below £5,000
- Excepted charities: registration where income above £100,000
- Exempt charities: regulation by principal regulator or registration (where income above £100,000)

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Non-company charities: new audit thresholds

- **Audit threshold:**
 - > £500,000 gross income; or
 - > £100,000 gross income and gross assets > £2.8m.
- **Examination threshold:**
 - > £10,000 gross income
 - Where gross income exceeds £250,000 independent examiner must be member of a body scheduled in the Act

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Company charities: new audit thresholds

- **No external scrutiny:**
 - Income not more than £90,000 and balance sheet total not more than £2.8m
- **Accountant's report:**
 - Income is between £90,000 and £500,000 and balance sheet total not more than £2.8m
- **Audit:**
 - Income more than £500,000 or balance sheet total more than £2.8m

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Audit, Accounts and Reports

- Increased thresholds for audit and independent examination
- Harmonisation of audit and examination arrangements for company and non-company charities
- A group accounts framework – reflecting the operating structure of many charities today
- A new statutory reporting duty and protection for auditors and examiners
- Reporting public benefit

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The charitable incorporated organisation (CIO)

- New legal form available exclusively to charities
- Avoids the need for dual registration
- Simpler, cheaper, less bureaucratic
- Special procedure for existing charitable companies to convert

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Less Red Tape

- Power to amend purposes and governing documents without prior Commission approval
- Power to modernise administrative procedures
- Provisions to facilitate mergers
- Transfer of property
- Spending from endowment funds
- Mortgaging charity property for a loan or grant

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Trustees

- The Act retains the central principle that trusteeship is unpaid **but**
- Trustees may be paid for non-trustee work in some circumstances
- Trustees may seek relief from personal liability from the Commission as well as the courts
- Power to buy trustee indemnity insurance

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Fundraising

- Tighter rules for professional fundraisers
- Reserve power for statutory regulation
 - Fundraising Standards Board
(www.fsboard.org.uk)
- New arrangements for certification of public charitable collections

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Implementation: Our aims

- Give time to properly prepare for changes
- Bring de-regulatory measures into force as quickly as possible
- Fulfil commitments made in Parliament
- Communicate forthcoming changes effectively and engage in consultation

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Implementation: Timetable

- Royal Assent in November 2006
- February 2007 – First tranche
- October 2007 – Second tranche
- January 2008 – Third tranche
- Provisionally:
 - 2008-09 - New arrangements for regulating exempt and excepted charities
 - 2009-10 Public charitable collections

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February 2007:

- Changes to the Charity Commission
- The Commission to prepare guidance on public benefit for consultation
- Increase in registration threshold for small charities
- Changes to audit thresholds
- Measures relating to trustee liability and insurance
- Other minor measures

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October 2007:

- Merger provisions
- Professional Fundraiser and Commercial Participator statements

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January 2008

- Changes to the audit and accounting regime for charities:
 - Small charitable companies
 - Group accounts
- The Charity Tribunal – to hear appeals against legal decisions of the Charity Commission
- The new definition of charity, including public benefit requirement

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January 2008 (contd.)

- New powers for the Charity Commission
- Remuneration of trustees providing a service to the charity
- Extended powers for unincorporated charities
- The Charitable Incorporated Organisation
- Changes to the law of Cy Pres

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Later Commencement

- Changes to the rules governing exempt and excepted charities (2008-09)
- New licensing regime for public charitable collections (2009-10)

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Other Commitments

- Plain language guide to the Act (published)
- Consolidation of charity law (2008-09 provisionally)
- Review of financial thresholds (2007-08)
- Review of secondary legislation under the existing Charities Acts (2007-08)
- Review of the impact of the public benefit requirement (2009-10)
- Evaluation of the impact of the Charities Act 2006 within five years (2011)

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Consultations

- March 2007 – Charity Commission consultation on draft public benefit guidance
- June 2007 – Consultation on accounting and reporting changes
- July 2007 – Ministry of Justice consultation on Charity Tribunal practice and procedure rules
- July 2007 – Consultation on professional fundraiser and commercial participator statements
- September 2007 – Consultation on CIO regulations
- October 2007 – Consultation on threshold review proposals

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Further Information

- Keep a lookout on the following websites:
 - www.cabinetoffice.gov.uk/thirdsector
 - www.charitycommission.gov.uk
- To receive email updates of progress on implementation:
 - give me your business card; or
 - Sign-up on our website